IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

C.A. NO. 4452 OF 2005 IN FIRST APPEAL NO.1310 OF 2005
WITH
C.A. NO. 4453 OF 2005 IN FIRST APPEAL NO.1311 OF 2005
AND
C.A. NO. 4454 OF 2005 IN FIRST APPEAL NO.1312 OF 2005
AND
C.A. NO. 4455 OF 2005 IN FIRST APPEAL NO.1313 OF 2005
AND
C.A. NO. 4456 OF 2005 IN FIRST APPEAL NO.1314 OF 2005
AND
C.A. NO. 4457 OF 2005 IN FIRST APPEAL NO.1315 OF 2005
AND
C.A. NO. 4458 OF 2005 IN FIRST APPEAL NO.1316 OF 2005
AND
C.A. NO. 4459 OF 2005 IN FIRST APPEAL NO.1317 OF 2005
AND
C.A. NO. 4460 OF 2005 IN FIRST APPEAL NO.1318 OF 2005
AND
C.A. NO. 4461 OF 2005 IN FIRST APPEAL NO.1319 OF 2005
AND
C.A. NO. 4462 OF 2005 IN FIRST APPEAL NO.1320 OF 2005
AND
C.A. NO. 4463 OF 2005 IN FIRST APPEAL NO.1321 OF 2005
AND
C.A. NO. 4464 OF 2005 IN FIRST APPEAL NO.1322 OF 2005
AND
C.A. NO. 4465 OF 2005 IN FIRST APPEAL NO.1323 OF 2005
AND
C.A. NO. 4466 OF 2005 IN FIRST APPEAL NO.1324 OF 2005
AND
C.A. NO. 4467 OF 2005 IN FIRST APPEAL NO.1325 OF 2005
AND
C.A. NO. 4468 OF 2005 IN FIRST APPEAL NO.1326 OF 2005
AND
C.A. NO. 4469 OF 2005 IN FIRST APPEAL NO.1327 OF 2005
AND
C.A. NO. 4470 OF 2005 IN FIRST APPEAL NO.1328 OF 2005
AND
C.A. NO. 4471 OF 2005 IN FIRST APPEAL NO.1329 OF 2005
AND
C.A. NO. 4472 OF 2005 IN FIRST APPEAL NO.1330 OF 2005
AND
C.A. NO. 4473 OF 2005 IN FIRST APPEAL NO.1331 OF 2005

Office Notes, Office Memoranda of :
coram, appearances, Court’s Orders: Court’s or Judge’s orders
or directions and Registrar Orders:

Mr.K.K. Tated, A.G.P. for the Applicants.

Mr.S.S. Kulkarni for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 19TH OCTOBER 2005

P.C. :

1. Heard Mr.Tated, A.G.P. in support of these Civil Applications. Mr.Kulkarni appears for the Respondents.

2. All these Civil Applications seek a stay of the judgment and order rendered by the Reference Court in the Land Acquisition References. The Reference Court has awarded the rate of Rs.600/- per sq. m. or thereabout for all these parcels of lands which are small parcels. The Land Acquisition Officer had awarded Rs.2/- per sq. m. Mr.Tated, A.G.P. for the Applicants, submits that the decision of the Reference Court cannot stand the scrutiny. He points out that the Reference Court has compared the instances of sale of land by CIDCO effected sometimes in the years 1982 to 1986 which are of course prior to the

notice under section 4 of the Land Acquisition Act in the present case issued in April 1986. He however submits that it is incorrect to compare the instances of sale by Developing Authority which obviously is selling the plots which are developed plots. He refers to para 12 of the judgment of the Apex Court in the case of **R.P. Singh v. Union of India - (2005) 7 SCC 24** where the Apex Court has observed that the proposition that Claimant should be paid higher compensation because the Respondents were selling the land at much higher rate cannot be accepted. This is because, as recorded therein, the counsel for the Government had pointed out that the land was now fully developed and for its development the Respondents had spent a lot of money and the Claimant could not be entitled to higher price for the reason stated therein. He also draws our attention to a judgment rendered by a Division Bench in **First Appeal No.32 of 1991 (Arvind Bhaskar Limaye v. the State of Maharashtra)**. The lands concerned over there were small parcels

of land and were also situated in the near vicinity from Panvel. They were non- agricultural lands and the lands had been levelled and developed. In spite of that, the Division Bench by its judgment and order dated 1st September 2005 has awarded rate of Rs.150/- per sq. m. That was when section 4 notice was issued in August 1984. Mr.Tated therefore submits that a stay be granted on the State being required to deposit an amount which should be a comparable amount.

3. Mr.Kulkarni, learned counsel for the Respondent Claimants, submits that the instances, which were placed before the Court, were comparable instances and they were the only instances available inasmuch as it is only CIDCO which has been selling land in the nearby vicinity. He has relied upon a judgment of the Apex Court in **Ravinder Narain v. Union of India - (2003) 4 SCC 481** and particularly para 9 thereof to point out as to what should be the consideration when compensation is to be awarded. He has therefore submitted

that if a stay is to be granted, the State should be directed to deposit the entire amount and he has offered to give 100% bank guarantee to withdraw the amount when deposited.

4. There cannot be any grievance with the proposition which is canvassed by Mr.Kulkarni. The fact however remains that the sale instances, which are used for comparison in the present case, are sales of developed parcels of land and therefore the observations of the Apex Court in R.P. Singh v. Union of India (supra) cannot be ignored. We cannot also ignore that a Division Bench of this Court in an acquisition made in the year 1984 has given a rate of Rs.150/- per sq. m. for lands in the near vicinity.

5. In the aforesaid circumstances, considering that the present notice under section 4 of the Land Acquisition Act was given in the year 1986 and the awarded amount is at the rate of Rs.600/- per sq. m., in our view, the ends of justice will be met if the

State is directed to deposit the amounts at the rate of Rs.200/- per sq. m. which will be roughly at 1/3rd of the amounts on which court fees are paid in each of these matters. We are conscious that in an appeal where there is monetary liability, an Appellant is required to deposit normally the entire amount. However, by a Maharashtra Amendment, a rule has been introduced in Order 41 and Rule 1(3) permits an Appellate Court to dispense with the deposit or security where it deems to do so for sufficient reason.

6. For the reasons stated above, in our view, deposit of 1/3rd of the amounts on which the court fees are paid in each of the matters would be appropriate. The State is directed to deposit these amounts within 12 weeks from today. The Respondent Claimants will be entitled to withdraw half the amount therefrom by giving a security to the satisfaction of the Trial Court and the remaining half by giving a bank guarantee of a nationalised bank. Mr.Kulkarni states that the Respondents

will give a bank guarantee of a nationalised bank for the entire amount. The bank guarantee will be kept alive till the hearing and disposal of all the Appeals.

7. There will be a stay of the impugned decision of the Reference Court on the above terms.

8. Civil Applications stand disposed of.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)